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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,279	01/22/2004	Francesca B. Kuglen	K551-003	9690

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EXAMINER	
DOAN, ROBYN KIEU	

ART UNIT	PAPER NUMBER
3732	

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03/17/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/764,279	KUGLEN, FRANCESCA B.	
	Examiner	Art Unit	
	Robyn Doan	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 January 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *26-29* is/are allowed.

6)☒ Claim(s) *1-25 and 29-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *1/7/09*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/7/09 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Ruffio (U.S. Pat. # 1,665,380).

With regard to claim 1, Ruffio discloses a hair retainer (fig. 2) comprising two opposed combs (13), each of the combs having a spine (11) defining the width of the comb and parallel comb teeth (at 13) projecting from the spine; a stretchable elastic mesh (10, col. 2, lines 57-58, 71-72, fig. 2) secured between the spines of the combs to produce tension between the combs when combs are moved away from each other, the elastic mesh having a width comparable to the width of the combs (Applicant is noted that the ends 10b of the mesh having a substantially width comparable to the width of

the comb) and being formed by elastic strands (it is noted that a plurality of elastic strands woven together to form a mesh) extending between the spines of the combs so as to form stretchable openings (col. 2, line 72 shows the device being formed of coarse mesh, therefore, it shows openings) which inherently can individually be stretched open so that an amount of the wearer's hair is capable to be pulled if desired; with regard to the limitations "the elastic strands are capable of threadedly beaded to provide a decorative elastic mesh", Applicant is noted that the above device is capable to do so, therefore, it meets the claimed language. In regard to claim 6, the elastic mesh being formed by interconnected elastic strands (see fig. 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuglen (USP 6,123,086) in view of JP # 409299131A.

Kuglen discloses a hair comb retainer (fig. 2) comprising two combs (35, 36), each comb having a spine (37) defining the width of the comb, a plurality of elastic strands (13) extending between and secured at spaced intervals along the spines of the combs, the elastic strands being strung between the spines so as to form stretchable openings (see fig. 1) between the elastic strands through which an amounts of the wearer's hair can be pulled. JP '131 discloses a comb (fig. 1) comprising a metal spine and a row of looped wires forming projecting teeth (5). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to substitute the comb of Kuglen with the wire looped comb as taught by JP '131, since a simple substitute of one known element (i.e. comb) for another to obtain predictable results such as providing flexibility to the teeth of the combs so they can easy to guide through the hair of the user would have been obvious. KSR International co. V. Teleflex Inc., 550 U.S.--, 82USPQ2d 1385 (2007).

Claims 29, 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leslie (USP Design # 483,522) in view of Kuglen and JP '131.

Leslie discloses hair retainer (fig. 1) comprising two opposed combs and a plurality of beaded strands connected the two combs together. Leslie fails to show the strands being made of elastic and the comb being looped metal wire comb. Kuglen as discussed above in claim 32 show a plurality of elastic strands connected the two combs together and JP '131 discloses a comb (fig. 1) comprising a metal spine and a row of looped wires forming projecting teeth (5). It would have been obvious to one

having an ordinary skill in the art at the time the invention was made to employ the elastic material as taught by Kuglen and the looped metal wire comb as taught by JP '131 into the device of Leslie in order to provide the flexibility to the strands as well as the combs. In regard to claim 33, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the strands to form a crisscross pattern, since such modification would involve a change in the shape of the known component.

Claims 1-25, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leslie in view of Kuglen and JP '131 as applied to claim 32 above, and further in view of Lorbiecki.

In regard to claims 1-4, 6, 8-11, 15-17, 20, 22-25, Leslie in view of Kuglen and JP' 131 discloses the essential claimed invention as discussed above except for the elastic strands being in a form a mesh with triangular shaped openings. Lorbiecki discloses a hair net (fig. 2) comprising a beaded mesh (fig. 2) comprising connector beads (8) interconnecting filament strands (3, 4) to form a decorative oven mesh (fig. 2). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify the device of Leslie in view of Kuglen and JP '131 with the mesh configuration as taught by Lorbiecki in order to not only maintain the hair but further enhance the attractiveness of the device (col. 1, lines 10-14). In regard to claim 7, it would have been an obvious matter of design choice to construct the filament strands being substantially clear, since such a modification would involved a mere change in the matter of design choice. In regard to claims 5, 12-14, 18, 19, 21, 27, 30,

31, It would also have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the length of the elastic mesh being between about three and one-half to four inches and the width of the combs and elastic mesh being between about three to four inches and the stretchable openings of the elastic mesh being of at least two different sizes, eight strands being secured at spaced intervals along the spines of the opposed combs and interconnected to form the elastic mesh between the combs, intermediate beads on the elastic strands between the connector beads and wherein the number of intermediate beads between each connector beads being substantially the same, since such a modification would have involved a mere change in the size and shape of the known component. A change in size and shape is generally recognized as being within the level or ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Claims 26-28 are allowable over prior art of record.

Response to Amendment

The affidavit filed on 1/7/09 under 37 CFR 1.131 has been considered but is ineffective because no date has been provided on the reference (Evita Peroni).

The affidavit under 37 CFR 1.132 filed 1/7/09 is insufficient to overcome the 35 U.S.C. 102 (b) rejections. Also, Applicant states that the claimed subject matter solved a problem that was long felt need in the art. However, there is no showing that others of ordinary skill in the art were working on the problem and if so, for how long. In addition,

there is no evidence that if persons skilled in the art who were presumably working on the problem knew of the teachings of the above cited references, they would still be unable to solve the problem. Further, with regard to the commercial success statement, evidence of commercial success must be commensurate in scope with the claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/
Primary Examiner, Art Unit 3732